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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

BAUSCH HEALTH US, LLC,

Plaintiff,

v.

ECI PHARMACEUTICALS LLC,
Defendant.

Case No. 18-CV-00355-RS

**STIPULATION AND ORDER
CONCERNING MODIFICATION OF
SCHEDULING ORDER AS MODIFIED
BY THE COURT**

1 Pursuant to Civil Local Rule 6-2, 7-1(a)(5), and 7-12, Plaintiff Bausch Health US, LLC
2 (“Bausch”) and Defendant ECI Pharmaceuticals LLC (“ECI”) (jointly, the “Parties”), by and
3 through their respective counsel, hereby stipulate as follows:

4 WHEREAS the following time modifications have been previously made in this case:

5 A thirty (30) day extension of time, until January 19, 2018, for Defendant to file a Rule 12
6 motion, answer, or otherwise respond to the complaint in Plaintiff’s originally-filed action against
7 Defendant and other parties (Dkt. 21; Chun Declaration in Support of Stipulation and Proposed
8 Order (“Chun Decl.”), ¶ 5);

9 A further extension of Defendant’s deadline to file a responsive pleading until twenty-one
10 (21) days after Plaintiff filed its amended complaint in this severed action, which was so Ordered
11 by the Court on January 16, 2018 (Dkt. 34; Chun Decl. ¶ 6);

12 Further extensions of time for Plaintiff to file its Opposition to Defendant’s Rule 12
13 Motion filing and Defendant to file its Reply to March 27, 2018 and April 24, 2018, respectively
14 (Dkt. 40; Chun Decl. ¶ 9);

15 A stay of the case from May 4, 2018 to July 31, 2018 pursuant to 28 U.S.C. § 1659(a)
16 pending the determination or termination of ITC Investigation No. 337-TA-1109, captioned “*In*
17 *the Matter of Certain Clidinium Bromide and Products Containing Same*” (Dkts. 70, 72; Chun
18 Decl. ¶ 10);

19 A modification of the schedule setting the deadline for the Defendant to file its Reply in
20 Support of its Motion to Dismiss for October 12, 2018 and setting a Joint Hearing on the Motion
21 to Dismiss for October 25, 2018 (Dkt. 79; Chun Decl. ¶ 11);

22 An extension of the time for Plaintiff to respond to Defendant’s amended answer and for
23 Defendant to file opposition papers (Dkt. 108; Chun Decl. ¶ 17);

24 A modification of the schedule extending all discovery deadlines and the trial date (Dkt.
25 122; Chun Decl. ¶ 22);

26 A modification of the schedule setting the deadline for Plaintiff to answer Defendant’s
27 counterclaims and further modify the scheduling order (Dkt. 102) with respect to fact and expert
28 discovery deadlines (Dkt. 136; Chun Decl. ¶ 23);

1 A modification of the schedule setting the deadline for amended pleadings at February 7,
2 2020 (Dkt. 150; Chun Decl. ¶ 27);

3 A modification of the schedule extending discovery deadlines (Dkt. 155; Chun Decl. ¶
4 28);

5 WHEREAS the Parties submitted to this Court under seal on January 9, 2020 a Joint
6 Letter Brief Regarding Certain Discovery Disputes (the “Initial Joint Letter”) (Dkt. 144; Chun
7 Decl. ¶ 25);

8 WHEREAS the discovery disputes raised in the Parties’ Initial Joint Letter were referred
9 to Magistrate Judge Kandis A. Westmore on January 15, 2020 (Dkts. 147, 153, 158-60; Chun
10 Decl. ¶¶ 26, 29);

11 WHEREAS ECI filed a Second Amended Answer and Counterclaims on February 7, 2020
12 (Dkt. 157; Chun Decl. ¶ 30), in which ECI expanded certain of the allegations advanced in its
13 counterclaims;

14 WHEREAS, after further attempts to meet and confer, as required by Magistrate Judge
15 Westmore’s order of January 21, 2020, the Parties filed three Joint Letters regarding certain
16 discovery disputes on February 14, 2020 (the “Joint Letters”) (Dkts. 158-160; Chun Decl. ¶ 31);

17 WHEREAS Bausch filed an Answer to ECI’s Second Amended Counterclaims on
18 February 21, 2020 (Dkt. 162; Chun Decl. ¶ 32);

19 WHEREAS the Parties are engaged in active settlement discussions (Chun Decl. ¶ 33);

20 WHEREAS the Joint Letters remain pending, such that the Parties await Magistrate Judge
21 Westmore’s ruling on their outstanding discovery disputes (Chun Decl. ¶ 31);

22 WHEREAS the Parties believe that good cause exists for modification of the scheduling
23 order and an extension of the jury trial commencement date to a date on or after December 1,
24 2020 at the Court’s convenience, to allow the Parties sufficient time to conclude discovery after
25 the resolution of the discovery disputes, and to file dispositive motions and prepare for trial
26 (Chun Decl. ¶¶ 34-35);

27 WHEREAS the Parties also believe that good cause exists for modification of the
28 scheduling order and an extension of the jury trial commencement date to a date on or after

December 1, 2020 at the Court's convenience, to allow the parties time to continue their productive settlement discussions (Chun Decl. ¶ 36);

WHEREAS the Parties agree, subject to this Court's approval, to modify the current scheduling order (Dkt. 102, as modified by Dkts. 136 and 155, respectively) as follows:

Event	Current Date	Date
Close of all non-expert discovery	February 28, 2020	225 days before trial
Designation of experts in accordance with FRCP 26(a)(2)	March 13, 2020	200 days before trial
Designation of supplemental and rebuttal experts in accordance with FRCP 26(a)(2)	April 17, 2020	170 days before trial
Completion of all discovery of expert witnesses pursuant FRCP 26(b)(4)	May 8, 2020	145 days before trial
Deadline for hearing of all pretrial motions	July 2, 2020	100 days before trial August 27, 2020
Pretrial Conference	On or about September 2, 2020 at 10:00am	25 days before trial November 25, 2020 at 10:00 am
Jury Trial Commences	Beginning on or after September 28, 2020 at 9:00 am	December 7, 2020 at 9:00 am

(Chun Decl. ¶ 37); and

WHEREAS the Parties do not believe that the proposed time modifications would cause prejudice to any party (Chun Decl. ¶ 38);

NOW THEREFORE, in order to effectuate the Parties' intent as set forth herein, the Parties, by and through their respective counsel, stipulate to and respectfully request that the Court enter an Order to extend the deadlines and trial date as shown above.

1 Dated: February 26, 2020

/s/ David S. Chun

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25 BAUSCH HEALTH US, LLC

26 Dated: February 26, 2020

/s/ Yixin Tang

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: February 26, 2020.



Honorable Richard Seeborg
United States District Judge